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9 CLASSIFICATION STANDARDS REGULATION

10 CONSULTATION MEETINGS

11 WITH THE SANTEE SIOUX NATION

12 taken on July 18, 2006

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22 Reported by Sherry G. Auge, RPR
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1 The Consultation Meeting with the SANTEE
2 SIOUX NATION, was taken before Sherry G. Auge, a
3 notary public in and for the County of Washington,
4 State of Minnesota, on July 18, 2006, taken at the
5 Sheraton Hotel, Lounge No. 3, 7800 Normandale
6 Boulevard, Bloomington, Minnesota, commencing at
7 approximately 10:30 a.m.

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9 A P P E A R A N C E S:

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11 ON BEHALF OF THE NATIONAL INDIAN GAMING
12 COMMISSION:

13 PHILIP N. HOGAN, Chairman of the National
14 Indian Gaming Commission, 1441 L Street NW, Suite
15 9100, Washington, D.C. 20005;

16 CLAYCE V. CHONEY, Chairman of the National
17 Indian Gaming Commission, 1441 L Street NW, Suite
18 9100, Washington, D.C. 20005;

19 JOSEPH M. VALANDRA, Chief of Staff of the
20 National Indian Gaming Commission, 1441 L Street
21 NW, Suite 9100, Washington, D.C. 20005;

22 NATALIE HEMLOCK, Special Assistant to the
23 National Indian Gaming Commission, 1441 L Street
24 NW, Suite 9100, Washington, D.C. 20005;
25 PENNY COLEMAN, Acting General Counsel for the

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1 National Indian Gaming Commission, 1441 L Street
2 NW, Suite 9100, Washington, D.C. 20005;

3 MICHAEL GROSS, Senior Attorney for the National
4 Indian Gaming Commission, 1441 L Street NW, Suite
5 9100, Washington, D.C. 20005;

6 JOHN R. HAY, Staff Attorney for the National
7 Indian Gaming Commission, 1441 L Street NW, Suite
8 9100, Washington, D.C. 20005;

9 JOHN PETERSON, Regional Director for the
10 National Indian Gaming Commission, St. Paul Office,
11 190 East 5th Street, Suite 170, St. Paul,
12 Minnesota;

13 ALLEN PHILLIPS, Field Investigator, 801 I
14 Street, Sacramento, California.

15

16 ON BEHALF OF THE SANTEE SIOUX NATION:

17 ROBERT CAMPBELL, Santee Sioux Nation Tribal
18 Council Treasurer;

19 ROBERT WHIPPLE, Santee Sioux Nation Ohiya
20 Casino Assistant Manager;

21 JENNIFER BLISS, Attorney at Law, Monteau &

22 Peebles, Bel Air Plaza, Suite 202, 12100 W. Center
23 Road, Omaha, Nebraska 68144.
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1 WHEREUPON, the following proceedings were duly
2 had:

3 COMMISSIONER HOGAN: Go on the record here
4 then. We will convene this
5 government-to-government consultation session
6 between the Santee Sioux Tribe and the National
7 Indian Gaming Commission. We are convened on
8 July 18th in Bloomington, Minnesota, pursuant to
9 the publication of the Federal Register of proposed
10 regulations by NIGC relating to definitions and
11 classification standards that NIGC may adopt that
12 deal, specifically, with Class II gaming and how
13 it's distinguished from Class III gaming.

14 I'm Phil Hogan, Chairman of the National Indian
15 Gaming Commission. Here with me in representing
16 NIGC, Commissioner Chuck Choney, the other member
17 of the Commission right now, and Joe Valandra, our
18 Chief of Staff, Natalie Hemlock, Assistant to the
19 Commission from our D.C. office.

20 Seated next to the reporter is Penny Coleman,
21 our Acting General Counsel. From her office are

22 Michael Gross and John Hay, who are attorneys in
23 that office. John Peterson's our Regional Director
24 from St. Paul who I think you know, and Allen
25 Phillips is an investigator from our Sacramento

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1 office who's one of our machine experts who's
2 helping us with this Class II exercise.

3 So, perhaps, we could begin by your introducing
4 yourselves and tell us where you fit in with the
5 Santee Tribe with respect to gaming, and then, we'd
6 very much like to hear what you have to say about
7 our proposals.

8 MR. ROBERT CAMPBELL: Okay. My name is
9 Robert Campbell. I'm the Santee Sioux Nation
10 Tribal Treasurer.

11 MS. JENNIFER BLISS: I'm Jennifer Bliss.
12 I'm with Jennifer Bliss with Monteau & Peebles, and
13 we represent the Santee.

14 MR. ROBERT WHIPPLE: Robert Whipple. I'm
15 the assistant manager at the Ohiya Casino.

16 COMMISSIONER HOGAN: Okay. We'd like to
17 hear your comments regarding our proposal.

18 MS. JENNIFER BLISS: Well, I think, first
19 off, we're not gonna spend a lot of time on some of
20 the issues that the other tribes have raised, you
21 know. Obviously, the Santee agree with the

22 positions taken by NIGA and the Great Western

23 Plain --

24 MR. ROBERT WHIPPLE: Great Plains.

25 MS. JENNIFER BLISS: Great Plains

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1 Tribes --

2 MR. ROBERT WHIPPLE: -- Indian Gaming
3 Association.

4 MS. JENNIFER BLISS: -- Association. And
5 I think we want to stress on the Santee's specific
6 situation. As you had stated earlier, obviously,
7 this is a huge issue for the Santee. You know,
8 actually, the tribe has spent millions of dollars
9 on defending their rights just to operate the Class
10 II games that we have right now, and, you know, it
11 doesn't bring in a lot of money, but it employs 30
12 people.

13 MR. ROBERT WHIPPLE: Yep.

14 MS. JENNIFER BLISS: And it does provide
15 some stability for those tribal members at the
16 tribe, and it's important that they don't lose the
17 little bit of income that they get from their
18 current facility. And under the proposed regs,
19 they wouldn't be able to have any of the machines
20 that they have in there now. And I think Robert
21 can speak to the entertainment value and the

22 possible ramifications that these regs would have
23 on customer's play.

24 MR. ROBERT WHIPPLE: Well, my name is
25 Robert Whipple, and for the record, I would like to

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1 submit a statement on behalf of our tribe.

2 COMMISSIONER HOGAN: Thank you.

3 MR. ROBERT WHIPPLE: And as far as the
4 Class II regs, right now, I know how we have it set
5 up is we operate our machines right now, but as it
6 is with our Class II machines, you know, we're
7 surrounded by Class III. And the customers from,
8 basically, South Dakota, Iowa, and some of the
9 other surrounding states, they come to our casino,
10 but as it is, we get a few that will come back to
11 play, but with the changes that are proposed, it
12 would hurt our business really bad. It would
13 almost devastate us as far as us operating a
14 profitable casino. With some of the changes, we
15 get some of the customers that come back, but with
16 our Class II machines, it's really hard, you know,
17 for us to, basically, stay afloat.

18 And as it is now, we employ 30 people. We make
19 enough to pay our bills, but with the new changes
20 it would just devastate the business operation.

21 COMMISSIONER HOGAN: Make sure I

22 understand what you're saying is that, you're
23 small. It's marginal right now, and many of the
24 people that find their way to your small facility
25 are used to playing in the river boats in Iowa

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1 or --

2 MR. ROBERT WHIPPLE: Yeah.

3 COMMISSIONER HOGAN: -- or the Class III
4 facilities on the South Dakota reservations, and
5 when they come down there, they get a little
6 frustrated with Class II now. And if Class II
7 becomes more slower and more deliberate or more
8 complicated they might not come back.

9 MR. ROBERT WHIPPLE: Yep. Basically,
10 that's how -- I've just been meeting some of the
11 people that we bring in on the bus and stuff. It's
12 a big change, you know, dropping a quarter in the
13 slot machine, but they come down, and I know they
14 get used to the machines. But with the changes
15 coming up, it's gonna, you know, complicate it,
16 slow it down a little bit, and change it all so --

17 MR. VALANDRA: Can you tell us what
18 machines you have right now?

19 MS. JENNIFER BLISS: You have Rocket
20 games?

21 MR. ROBERT WHIPPLE: We have Rocket games,

22 and we have Diamond games and multimedia. They're

23 all Class III.

24 MS. COLEMAN: Are these all three-touch

25 games?

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1 MR. ROBERT WHIPPLE: Yeah. And as far as
2 our bingo hall, I think, we seat up to about 100
3 people. But we're so isolated, you know, from the
4 bigger cities that sometimes we have to bus people
5 in just to get them there to play, and I don't
6 know. Where we're isolated at, it's really hard
7 for us to get the people there, you know, that some
8 of the bigger places do get.

9 MS. JENNIFER BLISS: I think the most
10 troublesome issue that, you know, that I've discuss
11 with the Council is the fact that this tribe has
12 fought so hard for what they have right now, and
13 these new regs would ultimately -- it would
14 devastate them. It would negate the fights that
15 they've won, and it would just be devastating. Do
16 you have anything you want to say, Robert?

17 MR. ROBERT CAMPBELL: Yes. I just wanted
18 to say we will be passing a resolution from the
19 Council opposing these changes, and I'll be working
20 with Jennifer to get those to you guys.

21 COMMISSIONER HOGAN: We'll look very -- we

22 will look forward to receiving those. As you
23 consider what you're gonna say in your resolution,
24 I ask you to take a look, carefully, at the
25 preamble that we wrote to these proposed

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1 regulations. We tried to say, you know, as plainly
2 as we could why we're trying to do what we're
3 trying to do, and what would be most useful to help
4 us get to the right place, is if there's specific
5 places where you think it should be adjusted or a
6 specific proposal that is gonna be problematic,
7 that's what we'd like to focus on. While it's
8 certainly, you know, makes the Tribe's position
9 clear to say we oppose any change, if we know what
10 change, specifically, is gonna be problematic, that
11 will be most useful to us.

12 With respect to the political environment, or
13 whatever, in Nebraska, is there anything on the
14 horizon there that might eventually lead the way to
15 Class III compacting do you believe?

16 MS. JENNIFER BLISS: No. Just -- just
17 still the Santee continue to appeal the secretarial
18 procedures that they were issued, and we just hope
19 that we're successful in that fight.

20 COMMISSIONER HOGAN: Well, there's been
21 more progress with respect to secretarial

22 procedures in the last year than there has,
23 probably, in the last preceding eight, or whatever,
24 with the Northern Arapaho in Wyoming getting there.
25 And I know that there are very serious discussions

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1 with the Seminole Tribe in Florida and the
2 Secretary's office, so I think, if and when, we see
3 those procedures move forward, that will send a
4 message to other state governments, and, maybe,
5 they'll take negotiating more seriously. But that,
6 of course, is something is not our role, NIGC's
7 role. That's more the Department of Interior, but
8 we watch it with great interest.

9 MS. COLEMAN: What is the status of Santee
10 secretarial procedures?

11 MS. JENNIFER BLISS: They're appealing
12 right now. I'm not working on that matter, so I
13 don't know any specifics, but, I think, it's been
14 fully briefed.

15 MS. COLEMAN: So it's in District Court.
16 You believe that the Tribe is appealing the
17 Secretary's determination on the scope of gaming?

18 MS. JENNIFER BLISS: Yes. Obviously, I
19 mean, we can go through the regs and specifically
20 cite the areas that the Santee have problems with,
21 but we just thought it was more important to

22 outline the fact that the Santee's already fought

23 this fight, and now we have to fight it again.

24 COMMISSIONER HOGAN: Well, I mean, the

25 more specific -- which was the game in the Santee

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1 case? Was that the Magic Irish?

2 MS. JENNIFER BLISS: Yeah.

3 COMMISSIONER HOGAN: You know, I don't
4 think that the games that will be permissible under
5 our regulations will be, you know, dramatically
6 night and day differences from that device. There
7 may be -- I think, there's some places where
8 they'll be more liberal and, perhaps, some areas
9 where they'll be more conservative.

10 And I don't know, but I expect your facility,
11 your machines, are not being played all the time
12 all day and night, and there are times when they're
13 down, and, you know, the speed of play. How many
14 times a player can play, in an hour, and so forth,
15 will, I think, influence revenues. So those are
16 the things we're trying to get a handle on and so
17 forth.

18 That would very useful to know in a environment
19 like Santee, which is different from the Linton
20 Band in California, where they got people standing
21 in line to play their machines, I guess, and how

22 this configuration, or this proposal, would impact
23 that kind of environment. That would be useful to
24 know that.

25 MR. ROBERT WHIPPLE: Okay.

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1 MS. JENNIFER BLISS: We can certainly
2 submit some written comments.

3 COMMISSIONER HOGAN: Okay. We're hoping
4 to compile all those by the 23rd of August, so if
5 they could be in by then, that would be helpful.

6 MS. JENNIFER BLISS: And, I guess
7 obviously, we're concerned that, is this government
8 consultation, is it just, are we just going through
9 the procedures here, or how -- how -- how seriously
10 is the NIGC taking these tribal comments?

11 COMMISSIONER HOGAN: Well, seriously as a
12 heart attack. We -- if we wanted to, we could have
13 just said, okay. These are the regulations. But
14 we thought to be consistent with our commitment to
15 consultation, we need to come out and listen to
16 what tribes have to say.

17 Now, will we take every bit of advice and make
18 every change that's requested? I expect not. Will
19 we take some of those changes that we think are
20 called for? I expect we will. So I hope at the
21 end of the day this will be viewed as a successful

22 exercise.

23 MS. JENNIFER BLISS: I know that some of
24 the consulting tribes and NIGA has asked for a
25 global consultation. Are there any plans to

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1 entertain that?

2 COMMISSIONER HOGAN: Well, we have
3 discussed it. We are just kind of starting our
4 tribal phase of this, and we haven't finalized any
5 plan with regard to further meetings.

6 COMMISSIONER CHONEY: We are making all of
7 these matters of consultation meetings a matter of
8 public record. We started last week in Washington.
9 We're out here. The week after, we're going to
10 Tacoma, Washington, and Southern California, and
11 then, first part of August, we're gonna be in
12 Oklahoma City.

13 Every bit of that is a matter of public record.
14 It's gonna be on our website. And if you wish to
15 get your comments that -- that you provide today,
16 you can either download it, or we can provide you
17 with a copy of that.

18 So if you look at all of these comments and
19 once these are published, then -- you're gonna see
20 them. We're gonna take some of these comments --
21 not all of them -- into consideration. That's why

22 we're having these meetings to help us to make
23 these -- the ultimate decision. And we definitely
24 do not want to be accused of, well, they didn't
25 listen to us here. We got to prove they didn't

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1 listen to us, though. We will take that into
2 consideration.

3 MS. JENNIFER BLISS: Okay. My last
4 comment was that, obviously, there's some concern
5 out there in Indian country that may be the NIGC,
6 and this is due to political pressure because of
7 the DOJ's fight with the Johnson Act and its
8 application to Class II gaming. And, maybe, maybe,
9 these proposed regs are just to satiate the DOJ and
10 even Senator McCain that said take care of this
11 issue. And the ultimate effect is it's,
12 ultimately, gonna hurt Indian gaming just to
13 satisfy the DOJ.

14 COMMISSIONER HOGAN: Well, the NIGC is
15 part of the federal family. Our narrow mandate is
16 to fill the role assigned to us under the Indian
17 Gaming Regulatory Act. It says, you can do Class
18 II gaming with technologic aids. It says, if it's
19 an electronic facsimile of a game of chance, it's a
20 Class III game. It says, NIGC should write some
21 federal standards.

22 Well, that kind of cries out for clarifying
23 where you separate those two. The Justice
24 Department is responsible for enforcing the Johnson
25 Act that says, you can't have gambling devices in

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1 Indian country, which IGRA says you can if you have
2 a Class III compact. But we were focused on this
3 issue, you know, I think, before the Justice
4 Department came along. The Justice Department
5 participated in and initiated the litigation that
6 included the Santee challenging whether those
7 particular games were Class II or Class III.

8 So we are trying to work with the Justice
9 Department, but, I think, we are on the leading
10 edge. They have a sent a proposal to Capitol Hill
11 seeking an amendment to the Johnson Act that would
12 carve out from the prohibition of Indian gambling
13 devices in Indian country, the space for
14 technologic aids. Their proposed legislation would
15 task us with writing regulations.

16 Well, we don't think we can wait for that
17 legislation, because the need is critical to
18 distinguish the two, so that's why we're doing what
19 we're doing. We are trying to coordinate to the
20 extent that it's appropriate, this activity with
21 the Justice Department, and keep Congress informed,

22 but we're doing it because it needs to be done, not
23 because somebody else is, kind of, holding our feet
24 to the fire and that type of thing.

25 MS. JENNIFER BLISS: Why such a broad

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1 difference from the court decisions? I mean, these
2 regulations, do not -- I mean, in the regs, and in
3 your introduction and your justification for doing
4 the regs, you obviously say that you're following
5 the court decisions, but it just -- it's -- I don't
6 see it that way, and I don't know if most Class II
7 gaming tribes would see it that way.

8 The Santee, obviously, have fought for, you
9 know, one of the cases that fought for more
10 definition with Class II gaming, or that was the
11 ultimate outcome of that case. And, I guess, why
12 do we need to change what the courts have already
13 said is Class II gaming?

14 COMMISSIONER HOGAN: Well, what the court
15 said, among other things in the Santee Sioux case,
16 was the Johnson Act has not been repealed, by
17 implication or otherwise, by the Indian Gaming
18 Regulatory Act. The Justice Department, therefore,
19 continues to think it applies that gambling devices
20 are impermissible in Indian country unless you have
21 a Class III compact.

22 What they said in Santee was, well, the game is
23 in the paper. It's not in the equipment that
24 dispenses the paper. And so when the equipment
25 becomes, or is perceived by the Justice Department,

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1 to be part of the game, they are gonna try and go
2 after that. We think greater clarity is needed,
3 and we think that there is a dramatic difference
4 between the equipment that's in existence today,
5 when compared to the Magic Irish game or the Lucky
6 Tab II game, the Mega Mania game that were all
7 addressed by the court decisions. And so we want
8 to try and get ahead of that curve and give
9 guidance to gaming machine manufacturers and tribes
10 and states so that everything will be crystal clear
11 on what you can and what you can't do. And,
12 hopefully, that will make a good, clear line.

13 MS. JENNIFER BLISS: Just one last
14 comment. We're probably running out of time, but I
15 mean, since -- is there any fear that these
16 regulations are gonna lock the technology in 2006,
17 as opposed to, you know, at least, when they
18 drafted IGRA. And the courts have interpreted it
19 to -- to say that, you know, Congress was taking
20 into account changing technology. When we look at
21 some of these things now, is there not gonna be

22 anywhere for these gaming companies to go to try to
23 make these games more entertaining?

24 COMMISSIONER HOGAN: In 1999, we published
25 our Minimum Internal Control Standards, and we were

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1 concerned then that there might be freezing in time
2 in the Indian gaming industry, and, therefore, we
3 were committed to continuing to update those, take
4 steps that were needed as far as technologic
5 advancement. We've done that a number of times,
6 and we're confident that this Commission, and
7 future commissions, would keep those Class II
8 regulations current, taking advantage of new
9 technologic developments that might, otherwise, not
10 have been envisioned when we're writing these
11 today.

12 COMMISSIONER CHONEY: The way technology
13 is moving, as it is, your question will be
14 answered, probably, in about another year. These
15 companies will find a way, and they also find ways,
16 to skirt around the current laws and regulations.

17 MS. JENNIFER BLISS: Do you have anything
18 else, Robert?

19 MR. ROBERT WHIPPLE: In closing, what we
20 submitted, I hope you all take under consideration
21 and look at our financial situation in making your

22 decisions. On behalf of myself and our 29 other
23 people that work there, I'd like to thank you for
24 your time today.

25 COMMISSIONER HOGAN: Good.

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1 MR. ROBERT CAMPBELL: When are you guys
2 gonna be through with all of the testimony and
3 everything?

4 COMMISSIONER HOGAN: We aren't sure
5 when -- the last hearing will be -- the last
6 scheduled hearing will be in Oklahoma in August.

7 COMMISSIONER CHONEY: August 8th.

8 MR. ROBERT CAMPBELL: August 8th. Okay.

9 COMMISSIONER HOGAN: Hopefully, by this
10 fall, we will be ready to have reviewed all the
11 comments.

12 MR. ROBERT CAMPBELL: Anything that we are
13 gonna put in to you guys, would be by August 23rd?

14 COMMISSIONER HOGAN: That's our current
15 closing date for written comments.

16 MS. JENNIFER BLISS: Is there any talk of
17 extending the comment period? I know that NIGA has
18 suggested that, especially, with the technical
19 standards still out there, that, maybe, it would be
20 helpful to extend those, so those can be read in
21 conjunction.

22 COMMISSIONER HOGAN: That has been
23 suggested, and we're considering it.

24 MS. JENNIFER BLISS: I know the Santee
25 would be -- we have been supportive of that

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1 position, and like Robert said, I think the
2 submitted written statement outlines will address
3 some specific concerns that are applicable to the
4 Santee, and we will certainly work to pass a
5 resolution outlining some more specifications to
6 help the NIGC in this consultation process.

7 COMMISSIONER HOGAN: Okay. We'll look
8 forward to that. Thank you very much for being
9 with us.

10 (Whereupon, the proceedings concluded at
11 approximately 10:40 a.m.)

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1 STATE OF MINNESOTA)
) SS
2 COUNTY OF WASHINGTON)

3 Be it known that I took the verbatim record of
4 the National Indian Gaming Commission's
5 Consultation Meetings regarding Classification
6 Standard Regulations on July 18, 2006, at The
7 Sheraton Hotel, 7800 Normandale Boulevard,
8 Bloomington, Minnesota 55439;

9 That I was then and there a notary public in
10 and for the County of Washington, State of
11 Minnesota, and that by virtue thereof I was duly
12 authorized to administer an oath but did not;

13 That the conversations of said participants was
14 recorded in stenotype by myself and transcribed
15 into typewriting, and that the Consultation
16 Meetings is a true record of conversations given by
17 the participants to the best of my ability;

18 That I am not related to any of the parties
19 hereto nor interested in the outcome of the action;

20 That I am not financially interested in the
21 action and have no contract with the parties,
22 attorneys, or persons with an interest in the
23 action that affects or has a substantial tendency
24 to affect my impartiality;

25 That all parties who ordered copies have been
26 charged at the same rate for such copies;

27

28 WITNESS MY HAND AND SEAL THIS 23rd day of July,
29 2006.

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Sherry G. Auge
Court Reporter

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